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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GARY RICHARD LAWMAN by and through
his Guardian ad Litem Richard de Villiers,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, PHILLIP M. GORDON; GLEN
PAUL MINIOZA; BRIAN W. KNEUKER;
CARLOS GUTIERREZ; CRAIG F. TOM;
PATRICK F. PENE; JULIO C. PALENCIA;
ANDREW N. BROWN; PAUL E.
RAPACAVOLI; MATTHEW M. O'SHEA;
MICHAEL HENNESSEY; GREG SUHR;
ROEL L. LAPITAN; FRANK LATKO a.k.a.
FRANZI LATKO; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 15-CV-01202 DMR

**ORDER RE OBJECTIONS TO
TRIAL EXHIBITS**

Trial Date: August 9, 2016

The court's rulings on the parties' objections to trial exhibits are set forth below. **It is the parties' responsibility to seek admission of exhibits into evidence during the trial.**

PLAINTIFF'S EXHIBIT LIST

	Description [Purpose]	Sponsoring Witness	Defendant's Objection	Ruling on Objections
1	CCSF's Supp. Response to Plaintiff's 1 st Set of Special Interrogatories (excerpts) [CCSF's claimed factual basis for probable cause]	CCSF		
2	CCSF's Response to Plaintiff's 1 st Set of Requests for Admission [establishes Plaintiff was unable to answer Officer Gordon's questions]	CCSF		
3	Photos of Four Seasons [location of arrest; gives jury context]	Rodie/ Flores	Object to photos with people in them	Overruled, but Plaintiff must blur faces
4	Video of Four Seasons residence lounge [location of arrest; gives jury context]	Rodie/ Flores		
5	911 call [does not report that Mr. Lawman was an "intoxicated trespasser"]	Flores		
6	911 call transcript [see Exhibit 5]	Flores		
7	Radio traffic (3 recordings) [no mention of Mr. Lawman being "intoxicated"]	CCSF		
8	CAD report [shows that Officer Gordon was not dispatched to the Four Seasons regarding an "intoxicated trespasser"]	Gordon		
9	WITHDRAWN			
10	WITHDRAWN			
11	Public Intoxication Report, Dec., 31, 2011 [if admissible, shows Gordon's purported observations]	Gordon		
12	Field Arrest Card [evidence of 647(f) arrest]	Gordon	Object to this document as incomplete. Page CCSF-8 (the reverse	Overruled. Plaintiff's Exhibit currently includes CCSF-8.

			side of the card) is excluded	
13	Booking Card [evidence of 647(f) arrest]	Gordon		
14	County Jail 1 Sobering Cell Observation Record [shows vague observation by jail and nursing staff]	CCSF		
15	Triage Note	Latko		
16	County Jail 1: Cell Housing History [shows length of stay in sobering cell for Plaintiff and Michael Moracha]	CCSF		
17	POST Learning Domain 37, Chapter 4 [SFPD training], Bates Nos. 915, 919, 921, 941-948, 1015-1052	CCSF/ Gordon	<p><u>As to Bates 915, 919, 921, and 941-948,</u> Plaintiff did not include these pages in the exhibit binders. However, Defendants intend to admit this portion of POST LD 37, and therefore do not object to this late addition to Plaintiff's Exhibit List.</p> <p><u>As to Bates 1015-1048,</u> Defendants object pursuant to FRE 402, 403 because this Chapter is a detailed training on 5150, and contains no other information that could be relevant to plaintiff's case. <i>See</i> Defendant's MIL No. 3 (Dkt. 150). Even if the Court permits some <i>questioning</i> regarding training as it relates to 5150, this 33 page chapter on the topic is irrelevant, duplicative, confusing, and prejudicial to defendants. It would be both prejudicial and</p>	Overruled. The court will give a limiting instruction.

			<p>a waste of time because the jury could spend time using the materials to evaluate whether Mr. Lawman <i>should</i> have been 5150'ed – something they are not permitted to do.</p> <p><u>As to Bates 1049-1057</u>, Defendants object to these pages under FRE 402, 403, as irrelevant, prejudicial, confusing, duplicative, and a waste of time. These pages contain summaries of various diagnoses that the jury might be tempted to use to diagnose the plaintiff.</p>	
18	Arrest and Control Manual, Ch. 9, Prisoner Transportation [police training], Bates Nos. 638-639	CCSF/ Gordon	<p>Even the two pages Plaintiff specifies of this document are not relevant (FRE 402), and should be excluded under 403 for the reasons explained in Defendant's MIL No. 3. First, training about transporting prisoners is irrelevant because all claims against Officer Kneuker (the transporting officer) have been dismissed. There is no dispute that Plaintiff was safely transported to CJ1. Second, the pages specified by the plaintiff relate specifically to medically assessing a prisoner being</p>	Sustained.

			transported, including when to summon an ambulance. The claim for failure to provide medical care has been dismissed. The information contained in these pages is not relevant to any other claim, but even if it could have some arguable relevance, it is overly prejudicial because it risks suggesting to the jury that the officers <i>should</i> have summoned an ambulance, or <i>should</i> have had plaintiff medically evaluated.	
19	Commonly Asked Questions About the ADA and Law Enforcement [police training], Bates Nos. 434-436	CCSF/ Minioza	Subject to Foundation FRE 402, 403 There is a risk that the jurors will accord more weight to this training manual than to the instructions the Court provides regarding the law, with respect to what the ADA requires.	Overruled, subject to proper foundation.
20	WITHDRAWN			
21	Diagram of County Jail 1 [location of sobering cell where Plaintiff was held]	Latko	Subject to foundation	Ruling deferred, subject to proper foundation.
22	S.F. Department of Public Health Policy: Sobering Cell	Latko		

23	SFPD Roll Call Training Lesson: Psych. Eval. of Adults-Part 1 [police training]	CCSF/ Gordon	Foundation, 402 and 403 This training applies to 5150; it specifically relates to psychologically distressed adults who have <u>not committed a crime</u> . Even if the Court permits some <i>questioning</i> regarding training as it relates to 5150, this training is duplicative, irrelevant, confusing, and prejudicial to defendants. It would be both prejudicial and a waste of time because the jury could spend time using the materials to evaluate whether Mr. Lawman <i>should</i> have been 5150'ed – something they are not permitted to do.	Sustained.
24	S.F. Sheriff's Dep. County Jail #1 Operations Manual: Sobering Cell [training re observation of sobering cell inmates] Bates Nos. 840-843	CCSF		
25	SFPD General Order 5.18: Prisoner Handling and Transportation [police training] Bates Nos. 236-238	CCSF	FRE 402, 403 This training about transporting prisoners is irrelevant because all claims against Officer Kneuker (the transporting officer) have been dismissed. There is no dispute that Plaintiff was safely transported to CJ1. Second, the pages specified by the plaintiff include information about	Sustained.

1			medically assessing a prisoner being transported, giving first aid, and transporting prisoners to SFGH, all which relates to dismissed claims. The pages also relate to preventing escape, and preventing injury to prisoners. The information contained in these pages is not relevant to any other claim, but even if it could have some arguable relevance, it is overly prejudicial because it risks suggesting to the jury that the officers <i>should</i> have transported him to SFGH, or <i>should</i> have had plaintiff medically evaluated.	
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16	26	SFPD General Order 6.14: Psychological Evaluation of Adults [police training] Bates Nos. 242-246	CCSF	FRE 402 403- This majority of this General Order is not relevant, and would be confusing to the jury because the focus is on 5150. <i>See</i> Defendant's MIL No. 3. Even if the Court permits some <i>questioning</i> regarding training as it relates to 5150, this General Order is duplicative, confusing, and prejudicial to defendants. It would be both prejudicial and a waste of time because the jury could spend time using the materials to evaluate whether Mr. Lawman
17				Overruled. The court will give a limiting instruction.
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			<i>should</i> have been 5150'ed – something they are not permitted to do.	
27	SFPD Booking & Detention Manual, Sec. 8: Intoxicated Prisoners [police training]	CCSF	FRE 402, 403 This training pertains to booking at district stations by SFPD, not booking by Sheriff at CJ1. It risks confusing the jury about what policies applied at CJ1, where Plaintiff was booked. Moreover, Plaintiff has not shown that there is any relevance to his Monell claim.	Overruled.
28	SFPD Roll Call Training Lesson: ADA & Law Enforcement – part 1 [police training]	CCSF	Foundation; FRE 402. This training is not relevant because it relates to how to deal with someone demonstrating threatening behavior because of a disability. This training is also inadmissible under FRE 403 because of the risk that the jurors will accord more weight to this training manual than to the instructions the Court provides regarding the law, with respect to what the ADA requires.	Sustained.
29	SFPD Disabilities Awareness Guide: Psychiatric Disabilities (excerpts) [police training] Bates Nos. 262-263, 265, 266, 288-290	CCSF	Foundation, FRE 402, 403 This Disabilities Awareness Guide is not relevant, because the excerpts the Plaintiff has chosen relate to 5150. <i>See</i> Defendant's MIL No.	Overruled. The court will give a limiting instruction.

			3. Even if the Court permits some <i>questioning</i> regarding training as it relates to 5150, the portions Plaintiff has chosen from this handbook are duplicative, confusing, and prejudicial to defendants. It would be both prejudicial and a waste of time because the jury could spend time using the materials to evaluate whether Mr. Lawman <i>should</i> have been 5150'ed – something they are not permitted to do. Moreover, Sergeant Kruger testified that this handbook is merely information, officers are not required to be familiar with its contents, and it is not used as a part of training. (Kruger Deposition, 85:8-19.)	
30	OCC Policy Recommendation 06.19.2003 [CCSF's notice of constitutional deprivations through 647(f) arrests]	CCSF	Foundation	Ruling deferred, subject to proper foundation.
31	American Academy of Psychiatry and the Law Ethical Guidelines [impropriety of rendering psychiatric opinions without a personal examination]	Keram	Objection, FRE 802, hearsay	Ruling deferred, pending testimony.
DEFENDANT'S EXHIBIT LIST				
A	Plaintiff's Public Intoxication Report, dated December 31, 2011 (BATES NO. CCSF 11)	Sergeant Gordon	No objection; Plaintiff stipulates to admit.	
B	CAD Audio folder 2917 12-31-11, consisting of 4 WAV	Sergeant Gordon,	No Objection; Plaintiff stipulates to admit.	

1		files 1) 2117-2118 DP01.wav 2) 2118-2119 DP12.wav 3) 2129-2138 DP16.wav 4) 2154-2155 DP12 (BATES NO. CCSF 6)	Officer Minioza, DEM custodian of records		
2	C	SFPD CAD Report S113652917 (CCSF 34)	Custodian of Records, DEM	No Objection; Plaintiff stipulates to admit.	
3	D	Plaintiff's Field Arrest Card, dated December 31, 2011 (BATES NO. CCSF 7-8)	Custodian of Records, SFSD	No Objection; Plaintiff stipulates to admit.	
4	E	Plaintiff's Booking Card, dated December 31, 2011 (BATES NO. CCSF 9-10)	Custodian of Records, SFSD	No Objection; Plaintiff stipulates to admit.	
5	F	Plaintiff's Sobering Cell Observation Record, dated December 31, 2011 (BATES NO. CCSF 12)	Deputy Rappicavoli, Nurse Lapitan, Custodian of Records, SFSD	No Objection; Plaintiff stipulates to admit.	
6	G	Plaintiff's Jail Medical Services records, dated December 31, 2011 (BATES NO. CCSF 35-41)	Nurse Latko	No Objection to Bates No. CCSF 41; Plaintiff stipulates to admit.	
7	H	Sobering Cell Housing History, dated December 31, 2011 (BATES NO. CCSF 42)	Custodian of Records, SFSD	No Objection; Plaintiff stipulates to admit.	
8	Q	DPH Jail Health Services Policy No. 303, Sobering Cell, rev July 2010 (BATES NO. CCSF 459-460)	Matt Friedman, Nurse Zeff, Nurse Lapitan, Custodian of Records, DPH	No Objection; Plaintiff stipulates to admit.	
9	R	POST Learning Domain 6, Property Crimes, version 5, 2008, Chapter 3: "Identifying and Classifying Crimes Related to Trespassing" Pages 3-1 to 3-12	Lt. Jack Hart, Mr. Jeffrey Martin	Objection. FRCP 37(c)(1): this document was not identified in Defendants' Rule 26 disclosure and was not produced in discovery. Relevance: only a few portions of this document potentially relate to issues involved in this case.	Sustained.
10	S	POST Learning Domain 37, Persons with Disabilities, version 4, Chapter 1 1-1 to 1- 10 (BATES NO. CCSF 939-	Lt. Jack Hart, Mr. Jeffrey Martin	No Objection; Plaintiff stipulates to admit.	

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T	POST Learning Domain 8.01.E05, Public Intoxication (BATES NO. CCSF 1058-1060)	Lt. Jack Hart, Mr. Jeffrey Martin	Objection; relevance, 403. The document includes drug intoxication and obstruction of public way as bases for 647(f) arrest; however, the Court has precluded reference to these elements and inclusion of this entire document would be misleading and confusing to the jury, and therefore unduly prejudicial to Plaintiff.	Overruled. The court will give a limiting instruction.
U	SFPD Statistics 2005-2014, Misdemeanor Arrests (BATES NO. CCSF 1784)	Jeanne Chisholm	Foundation; hearsay; relevance; requires expert testimony. Jeanne Chisholm was not designated as an expert witness and Defendants did not designate any expert in statistical analysis. Ms. Chisholm may not testify "as to the statistical significance" of arrest data, even assuming such data is admissible. <i>Shea v. Kerry</i> , 961 F. Supp. 2d 17, 50 (D. D.C. 2013). Plaintiff requests a hearing under FRE 104 prior to introduction of this evidence at trial	Overruled, subject to proper foundation.
V	San Francisco Area Map (BATES NO. CCSF 1785)	Sgt. Gordon, Officer Minioza	Relevance.	Ruling deferred, pending testimony.
Y	Plaintiff's Verified Responses to CCSF's Special Interrogatories, Set 1, served December 12, 2014	N/A	No Objection. Plaintiff stipulates to admit.	
B	San Francisco Public	Jeffrey Martin	Lack of foundation	Overruled, subject to

B	Intoxication Arrests		and/or authentication; relevance; FRE 403; FRCP 37 (this document was never identified or produced as part of Defendants' Rule 26 disclosures; instead, it was handed to Plaintiff's counsel for the first time at Mr. Martin's deposition).	proper foundation.
B	Compared to Other Cities (Exhibit C to the Deposition of Jeffrey Martin)			
C	Treatment records of Harry Motro, Psy.D (Exhibit 41 to the Deposition of Harry Motro, Psy.D)	Dr. Motro	Relevance; hearsay; foundation; FRE 403.	Sustained.
M	SFSD Sobering Cell Policy, revised March 17, 2011 (CCSF 840-843)	Chief Deputy Matthew Freeman, Custodian of Records, SFSD	No Objection. Plaintiff stipulates to admit.	
N	Photo 1 of Four Seasons lobby	John Flores, Four Seasons security; John Rodie, Four Seasons concierge; Dwight Moore, City Investigator	Objection. The Court has indicated that the sign outside the lounge may not be part of the exhibit.	Overruled, but Defense must crop or blur "private" sign.
O	Photo 2 of Four Seasons lobby	John Flores, Four Seasons security; John Rodie, Four Seasons concierge; Dwight Moore, City Investigator	No Objection; Plaintiff stipulates to admit.	
P	Photo 3 of Four Seasons lobby	John Flores, Four Seasons security; John Rodie, Four Seasons concierge; Dwight Moore, City Investigator	No Objection; Plaintiff stipulates to admit.	
Q	Photo 4 of Four Seasons lobby	John Flores, Four Seasons security; John	No Objection; Plaintiff stipulates to admit.	

		Rodie, Four Seasons concierge; Dwight Moore, City Investigator		
R R R	Photo 5 of Four Seasons lobby	John Flores, Four Seasons security; John Rodie, Four Seasons concierge; Dwight Moore, City Investigator	Objection. The Court has indicated that the sign outside the lounge may not be part of the exhibit.	Overruled, but Defense must crop or blur "private" sign.
S S S	Photo 6 of Four Seasons lobby	John Flores, Four Seasons security; John Rodie, Four Seasons concierge; Dwight Moore, City Investigator	Objection. The Court has indicated that the sign outside the lounge may not be part of the exhibit.	Overruled, but Defense must crop or blur "private" sign.

IT IS SO ORDERED.

Dated: August 8, 2016

